

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

LARRY DALE JOHNSON,

Petitioner,

v.

WARDEN J.E. THOMAS,

Respondent.

No. 3:11-cv-00515-ST

OPINION AND ORDER

MOSMAN, J.,

On January 31, 2012, Magistrate Judge Stewart issued Findings and Recommendation (“F&R”) [28-1] in the above-captioned case, recommending that the Petition for Writ of Habeas Corpus [2] be denied. No objections were filed.

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, under a de novo or any other standard, the factual or legal

conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Stewart's recommendation and I ADOPT the F&R [28-1] as my own opinion. The Petition for Writ of Habeas Corpus [2] is DENIED. I decline to issue a certificate of appealability on the basis that petitioner has not made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 19 day of March, 2012.

/s/Michael W. Mosman
MICHAEL W. MOSMAN
United States District Court